

SECTION 319
FEDERAL CONSISTENCY GUIDANCE

FEDERAL CONSISTENCY WITH STATE NONPOINT SOURCE
MANAGEMENT PROGRAMS

U.S. Environmental Protection Agency
Office of Water
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I. Executive Summary

The Federal consistency provisions in Section 319 of the Clean Water Act (CWA) authorize each State to review Federal activities for consistency with the State nonpoint source (NPS) management program. If the State determines that an application or project is not consistent with the goals and objectives of its NPS management program and makes its concerns known to the responsible Federal agency, the Federal agency must make efforts to accommodate the State's concerns or explain its decision not to in accordance with Executive Order (EO) 12372.

Section 319 directs each State, as part of its NPS management program, to develop a list of the Federal assistance programs and development projects which it will review for consistency with the State's NPS management program. The State lead NPS agency will be responsible for conducting Federal consistency reviews. States are not expected to develop any new process for Federal consistency reviews but rather to conduct these reviews in accordance with the intergovernmental review process established by EO 12372, if they have one. The lead NPS agency should provide its list of the Federal programs and projects which it will review to the State's Single Point of Contact (SPOC) for Federal assistance. The SPOC will then route appropriate Federal project information to the lead NPS agency for review.

States should review Federal assistance programs and development projects for consistency by referring to the specific goals, objectives, programs, and authorities contained in the State's management program. The ability of a State to ensure Federal consistency will depend on the clarity and specificity of the management program. This guidance recommends that States distribute a description of the criteria and guidelines governing its consistency reviews including copies of the State's NPS management program to the appropriate Federal agencies, the SPOC, and all State agencies with NPS responsibilities. States are encouraged to focus Federal consistency reviews on assistance programs or development projects which impact impaired or threatened waters as identified in State NPS assessment reports or CWA Section 303(d) lists or which may cause future impairments or threats.

Although the primary formal Federal consistency review mechanism will be that created by EO 12372, this guidance recommends use of other less formal review processes in addition to the formal review process. Use of Memoranda of Understanding may promote better working relationships with Federal officials because they provide an opportunity for lead State NPS agencies and Federal agencies to work together to achieve water quality goals.

EPA will work with the States and Federal agencies to support implementation of the Section 319 Federal consistency requirements. Toward this end, EPA may conduct educational and liaison activities, provide technical assistance to States and Federal agencies, and if requested, may facilitate State-Federal negotiations and assist with mediation and conflict resolution. EPA will also work with Federal agencies to support their pollution abatement and environmental protection efforts and their efforts to ensure that their programs and policies are compatible with States' water quality standards and program implementation goals.

The Federal consistency provision in Section 319 of the Clean Water Act provides an opportunity

for States to engage Federal agencies in State efforts to improve implementation of their nonpoint source management programs and, hence, to more effectively protect water quality. Used effectively, the consistency provision provides a tool to promote communication and cooperation between State and Federal agencies for achievement of shared water quality goals.

II. Introduction

A. Background

Nonpoint source (NPS) pollution is water pollution caused by rainfall or snowmelt moving over and through the ground and carrying natural and human-made pollutants into lakes, rivers, streams, wetlands, estuaries, coastal waters, and ground water. Atmospheric deposition and hydrologic modification are also sources of nonpoint pollution. Across the United States, States have reported that nonpoint source pollution is the most pervasive cause of water quality problems. See the National Water Quality Inventory: 1996 Report to Congress, available from EPA, at NCEPI, 11029 Kenwood Road, Bldg. 5, Cincinnati, OH, 45242. For further information, visit EPA's Office of Water 305(b) website at [http://www.epa.gov/305\(b\)](http://www.epa.gov/305(b)). Other information corroborates this finding. See the Index of Watershed Indicators, available online at <http://www.epa.gov/surf>. EPA and the States are accelerating their efforts to prevent and reduce nonpoint source pollution. See the Clean Water Action Plan at <http://www.epa.gov/cleanwater>.

Congress enacted Section 319 of the Clean Water Act in 1987, establishing a national program to control nonpoint sources of water pollution. Under Section 319, States address nonpoint pollution by developing nonpoint source assessment reports that identify nonpoint source pollution problems and the nonpoint sources responsible for the water quality problems. States then develop management programs to control NPS pollution. All States now have EPA-approved NPS assessment reports and management program and are implementing their management programs.

Federal agencies have key roles to play in helping to control NPS pollution. In recognition of this, Congress included in Section 319 a provision to promote the consistency of Federal assistance programs and development projects with State NPS management programs. Section 319 provides for State review of Federal assistance applications and development projects to determine their consistency with the requirements, goals, policies and other provisions of the State's NPS management program. Use of the Federal consistency provision will provide States and Federal agencies the opportunity to improve nonpoint source programs through mutual cooperation and coordination of activities.

This guidance is intended to help States and EPA follow through on mutual commitments made between States and EPA to take steps to strengthen the linkage between State NPS programs and Federal programs and activities through Section 319.

In May 1996, EPA published, with the support of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), a guidance on strengthening the national NPS program. In this guidance, States and EPA agreed upon nine key elements which characterize an effective and dynamic State nonpoint source program. Specifically, this guidance responds to key element seven: "The State identifies Federal lands and activities

which are not managed consistently with State nonpoint source program objectives. Where appropriate, the State seeks EPA assistance to help resolve issues.” The purpose of this guidance is to help meet the needs of the States and Federal agencies which are trying to resolve consistency issues.

EPA intends to work with States and Federal agencies to support implementation of the Section 319 Federal consistency provision. EPA will conduct educational and liaison activities, provide technical assistance to State and Federal agencies, and, if requested, facilitate State-Federal negotiations and assist with mediation and conflict resolution. EPA will also work with Federal agencies to support their pollution abatement and environmental protection efforts and their efforts to ensure that their programs and policies are compatible with the Clean Water Act, the States’ water quality standards, and program implementation goals.

B. Statutory Authority

Authority for the States’ NPS Federal consistency review is found in the following two provisions in Section 319 of the Clean Water Act. Section 319(b)(2)(F) directs States to list Federal assistance applications and development projects which they would like to review for consistency within their State management program. Section 319(k) directs Federal Agencies to “accommodate” the concerns of the State according to EO 12372.

(b) STATE MANAGEMENT PROGRAMS

(2) SPECIFIC CONTENTS--Each management program proposed for implementation under this subsection shall include each of the following:

(F) An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State’s nonpoint source pollution management program.

(k) CONSISTENCY OF OTHER PROGRAMS AND PROJECTS WITH MANAGEMENT PROGRAMS--The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (b)(2)(F) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in

Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.

C. Executive Order 12372

Section 319(b)(2)(F) directs States to conduct their Federal consistency reviews “pursuant to the procedures set forth in Executive Order 12372.” EO 12372 (Appendix A) specifies:

- In Section 1, that Federal agencies must provide opportunities for State and local consultation on proposed Federal financial assistance and development;
- in Section 2, that Federal agencies communicate with the States according to their State processes and to do so as early as is “reasonably feasible.”
- in Section 2(c), that States may develop their own processes to review and coordinate proposed Federal financial assistance and development.

The Federal agencies then:

“make efforts to accommodate State and local elected officials’ concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.” (This provision will be referred to as “accommodate or explain.”)

EO 12372 replaced an earlier clearinghouse process under OMB Circular A-95 and enabled States to establish their own “State process” for review of and comment on proposed Federal financial assistance and direct Federal development projects. Most State processes established pursuant to EO 12372 designate a SPOC to perform clearinghouse functions (e.g., for NPS-related issues), including the receipt, coordination and transmittal of project notifications and of review comments. The role of the SPOC will be discussed further in section E below.

D. Federal Assistance Applications and Development Projects

Federal assistance applications and development projects (for a partial list of Federal assistance applications and development projects related to NPS issues, see Appendix B) covered by the consistency provision include all programs which are listed in the Catalogue of

Federal Domestic Assistance and may have an effect on the purposes and objectives of the State's NPS program, regardless of whether or not they are subject to EO 12372 (i.e., if they do not appear on OMB's list under Section 4 of EO 12372). If States use EO 12372 procedures to review a program that is not subject to EO 12372, the "accommodate or explain" provisions apply.

Programs eligible for inclusion on the State's list include all programs and projects:

- "which may have an effect on . . . the State's nonpoint source pollution management program" **and** which are either:
 - 1) currently subject to EO 12372; **or**
 - 2) listed in the current Catalogue of Federal Domestic Assistance.

E. State Process and the Single Point of Contact

The SPOC (a list of State SPOCs is found in Appendix C) is responsible for consolidating State comments and preparing the "State process recommendation," which constitutes the State's official review comments for NPS-related activities.

Under EO 12372, Federal agencies must make efforts to "accommodate State and local elected officials' concerns" expressed as a State process recommendation through the SPOC. Comments transmitted to the Federal agencies outside of an established State process and SPOC do not trigger the "accommodate or explain" requirements of EO 12372.

For States which do not have an established State process or designated a SPOC, the lead State NPS agency:

- 1) should assume the clearinghouse functions of the State process and SPOC;
- 2) is responsible for obtaining and disseminating NPS-related Federal program information; and
- 3) coordinates and transmits Federal consistency comments.

Note: In States without an established State process, however, the requirements of EO 12372 will not be strictly applicable. For States which do not have an established State process, EPA recommends use of informal review mechanisms initiated by either the State or the Federal agency.

F. Informal Review Mechanisms

While the primary formal Federal consistency review mechanism will be that created by EO 12372, other less formal review processes may also prove useful for ensuring Federal consistency with State NPS Management Programs, especially those States without an established State process. EPA recommends that officials from the lead State NPS agency build relationships and focus on informal processes which include early notification, consultation, and mutually agreed-upon procedures for discussing and resolving concerns.

Use of Memoranda of Understanding (MOUs) (see Appendix D for State-Federal NPS MOUs) promote better working relationships with Federal officials by providing opportunities for lead State NPS agencies and Federal agencies to work together to achieve water quality goals. States and Federal agencies may want to agree upon measures of success so that feedback can be provided on programs and achievements which is necessary for effective coordination, cooperation, and implementation.

G. Other Existing Review Mechanisms

Other existing review processes may also prove useful for ensuring Federal consistency with State NPS management programs. Particularly important is Executive Order 12088 “Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements” (Appendix E). Section 1-601 of EO 12088 states:

Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard, the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

Other programs and provisions that include consideration of Federal consistency with the State environmental programs and requirements include:

- the NEPA environmental review process (mainly applicable to Federal development projects);
- the FEDPLAN pollution abatement process (based on EO 12088 and mainly applicable to Federal facilities and lands);
- Section 313 of the Clean Water Act;
- the Coastal Zone Management Act;
- Section 320 of the Clean Water Act (the National Estuary Program);

- Section 303(d) of the Clean Water Act (Total Maximum Daily Loads); and
- Section 401 of the Clean Water Act (State certification).

(See Appendix F for discussion of these programs' procedures and requirements.)

H. State NPS Management Programs

The ability of a State to obtain Federal consistency depends greatly on the clarity and specificity of the management program. Otherwise, there may be considerable uncertainty as to what Federal assistance programs and development projects are or are not consistent with the State program. (See Appendix G for an example of how a State conducts consistency reviews through a provision in its NPS management program.)

Section 319(b)(2)(B) of the Clean Water Act discusses specific contents to be included in the State NPS management program:

An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices...

Furthermore, according to Section 319(b)(2)(C), the NPS management plan should include a schedule containing milestones for implementation, either State-wide or in a particular watershed. A State's ability to assess a Federal agency's consistency with a State NPS management program thus depends upon the State's ability to define in its programs its specific goals, objectives, programmatic activities, legal authorities, and implementation schedules.

Pursuant to the Nonpoint Source Program and Grants Guidance (issued by EPA's Office of Water, Assessment and Watershed Protection Division in May 1996) States are reviewing and modifying or upgrading their NPS management programs as appropriate to achieve the nine key elements of effective NPS programs. (See Appendix H for text of nine key elements of an NPS management program.) The seventh of these nine key elements specifies "the State identifies Federal lands and activities which are not managed consistently with State nonpoint source program objectives."

For States that did not include Federal consistency provisions in their original NPS management programs, EPA recommends inclusion of Federal consistency in subsequent NPS management program upgrades. A modified or upgraded NPS management program

defines Federal consistency review guidelines and identifies assistance programs and development projects that are or may be inconsistent with the State's NPS management

program.

Upgraded programs that are clearly-defined and described will enhance program clarity, direction, and effectiveness, thereby improving external communication with all parties, including Federal agencies.

III. CONSISTENCY REVIEW PROCESS

The State should prepare and distribute to Federal agencies a Management Program summary which highlights major goals, policies, programs, requirements, and targeted programmatic and geographic areas. The State should also prepare a similar summary of the guidelines and specific criteria it will use in its Federal consistency reviews. Such summaries serve as quick and accessible references for Federal agency personnel seeking to accommodate the State's concerns.

A. List of Federal Assistance and Development Projects (Section 319(b)(2)(F))

Under Section 319(b)(2)(F), each State program should develop a list of Federal assistance programs and development plans that it wishes to review for consistency. The list of programs and projects should be prepared by the lead NPS agency in consultation with the SPOC and all other appropriate agencies within the State, including local agencies having NPS management responsibilities. The list should be included in a State's NPS management program modification or upgrade.

EPA recommends that the State focus its list on assistance programs and development plans that may affect threatened and impaired priority waterbodies (e.g., CWA Section 303(d) listed waters) as well as new programs, new sources, and new plans that may degrade other waterbodies. Because review of individual applications is time-consuming and resource intensive for both the States and the Federal agencies, States may wish to focus some of their review activities on entire Federal programs for consistency rather than reviewing individual contracts or applications or use a resource-based approach to focus on whether a water resource within a specific jurisdiction is either impaired or vulnerable to impairment from Federal activity.

B. Transmittal of the List

Under EO 12372, the lead State NPS agency should provide, as part of a NPS management program modification or upgrade, the list of Federal assistance programs and development projects that it wishes to review to the SPOC. The SPOC then routes the information on the Federal development projects and assistance plans to the lead State NPS agency for review and comment.

If the lead State NPS agency identifies programs/projects which it would like to review for consistency with the NPS Management Program but which are not eligible for listing and

review under the two criteria (assistance programs and development projects which may have an effect on the States nonpoint source pollution management program *and* are currently subject to EO 12372 *or* are listed in the current Catalogue of Federal Domestic Assistance), the lead NPS agency should notify the responsible Federal agency and the appropriate EPA Regional Office.

Federal agencies should make efforts to allow States to conduct Section 319 consistency reviews of assistance programs and development projects that do not fit the criteria above wherever possible; and where the Federal agency determines that section 319 consistency review is not possible, the Federal agency should inform the State of any suggested alternative mechanism for State input.

C. Preparation of Comments

In order for the consistency review to be effective, NPS Federal consistency reviews need to be conducted within the time frames and deadlines already established by the State process and by the Federal agencies' implementing regulations for EO 12372. Generally, the established time frames and deadlines allow for comment periods of 30-60 days. The lead NPS agency may want to establish any internal deadlines necessary to ensure that comments may be transmitted through the State process within the established time frames.

When the lead State NPS agency receives applications or project information from the SPOC, the lead NPS Agency should route this information to all appropriate cooperating State agencies and other entities having NPS Management Program responsibilities and interests. These cooperating agencies and entities should submit any Federal consistency-related comments to the lead State NPS agency for incorporation into consensus NPS Federal consistency review comments to be transmitted to the SPOC. If consensus among the various NPS comments cannot be reached, the lead State NPS agency still prepares a NPS Federal consistency recommendation to the SPOC but attach copies of all differing comments.

The lead NPS agency may wish to delegate lead responsibility for providing consistency comments for particular Federal agencies to a cooperating agency where this would be more appropriate or practical. In such instances, however, the NPS lead agency may retain oversight responsibility and remain the primary contact with the SPOC.

Because the EO 12372 obligation of "accommodate or explain" only applies to the State process recommendation submitted to the Federal agencies through the State SPOC, the lead NPS agency must work with the SPOC to ensure that its concerns are adequately reflected in the State process recommendation. The lead State NPS agency may also wish to provide

copies of any prepared comments directly to the Federal agency in addition to providing them through the State process. States are also encouraged to send copies of their comments to

EPA Regional Offices.

Use of public participation at this and all stages of the consistency review process is at the discretion of the State. The lead NPS agency may wish to provide for public participation in the consistency review process, particularly in significant or controversial reviews.

D. How to Review for Consistency

States review Federal assistance programs and development projects for consistency by referring to the specific goals, objectives, programs, and authorities contained in the State's NPS management program. The ability of a State to obtain Federal consistency will depend on the clarity and specificity of the Management Program.

States should outline their Federal consistency review process criteria and guidelines as clearly as possible in their Management Program. These criteria and guidelines may be provided to the SPOC, all State and local agencies with NPS responsibilities or interest, all relevant Federal agencies, and others, as appropriate.

There are a variety of aspects of State NPS programs that may be used as assistance programs and benchmarks for reviewing the consistency of Federal assistance programs and development projects with their NPS programs. The clearest benchmarks are those which involve consistency with State laws (e.g., Forest Practices Act; Erosion and Sedimentation Control Laws; and laws pertaining to the licensing and permitting of various hydromodification projects). Sources of NPS pollution that are regulated by State laws such as new development, construction, timber harvesting, road building, etc. are also enforceable authorities that could be included in a consistency review.

A second and equally important benchmark is the State's water quality standards, including the designated uses of the State's waters. States can evaluate their programs with respect to the likely effect on beneficial uses of water as reflected in State water quality standards and other State requirements (e.g., nuisance laws).

In the absence of statutory and regulatory authorities, a State may use any of its general guidelines or handbooks as technical bases for Federal consistency, if they are referenced in the State's NPS management program. These include States' field office technical guides, forestry BMP handbooks, and other similar documents that are routinely used by the State to guide implementation of its NPS program. States seeking to use such handbooks effectively to conduct consistency reviews should strive to include as much specificity as possible. General guidebooks with wide ranging practices that do not reflect a specific level of effectiveness or performance make it difficult to evaluate Federal consistency.

Finally, States can promote Federal focus on priority State water quality problems by identifying and prioritizing priority areas and specific activities in those areas in their NPS

management program upgrades or modifications. For example, States should be focusing State activities and promoting Federal consistency to address 303(d) listed waters.

E. Conflict Resolution

Once the Federal agency has reviewed the comments by the lead agency, EO 12372 requires that the Federal agency “accommodate” the concerns of the State or “explain” why it cannot. EPA recommends development and use of written documentation (e.g., through a MOU) to address conflicts that may arise.

Obtaining consistency requires information. To avoid conflict, State and Federal agencies may want to consider developing and agreeing on communication mechanisms *in addition* to the formal consistency review process to improve and increase information exchange. If States and Federal agencies establish a working consensus of their goals, then progress can be tracked according to them. If goals are not met or cannot be agreed upon, a conflict may arise.

If resolution of a conflict cannot be achieved, at the request of the State, EPA Regional Offices will work with their regional counterparts in other Federal agencies to resolve issues and support State efforts to ensure that Federal programs and projects are compatible with the State’s NPS Management program. At the request of the State, the EPA Region will convene a conflict resolution meeting to include the State lead agency, the local and/or Regional representatives of Federal agencies, the EPA Region, and, where appropriate, other concerned parties.

Where the EPA Region is unable to negotiate a mutually acceptable accommodation between the State and the local and/or regional representatives of the Federal agency, as an ongoing activity the Regional office will inform EPA Headquarters in writing. As necessary, EPA Headquarters will then notify the headquarters office of the concerned Federal agency and attempt to negotiate resolution of the issue.

If informal negotiations between EPA staff and staff of the other Federal agency fail to resolve the conflict, the matter may be elevated for resolution, as appropriate. Pursuant to Section 319(k) and EO 12088 (Appendix E) the Administrator may request OMB’s assistance in resolving the conflict.

EPA Headquarters will work with Federal agency headquarters to foster consideration of NPS concerns in the development and implementation of Federal agency legislation, regulations, policies, and programs. In particular, EPA Headquarters will negotiate resolution of issues of broad scope identified by the Regions or by a significant number of States through their section 319(b)(2)(F) lists and their section 319 Annual Reports.

IV. Summary of Roles

A. State Agencies

As part of a NPS management program modification or upgrade, each State includes in its management plan a list of Federal programs and projects, if any, for which it will review individual applications and projects for consistency with the Management Program. A description of the State's anticipated Federal consistency review process (pursuant to 12372 or not) and a discussion of the criteria and guidelines governing the reviews should be included in the list. With approval from EPA, States may update the list and other information each year in their Annual Reports. States may also update this information as necessary between Annual Reports by providing written notification to the EPA Regional Office for EPA approval. EPA encourages States to keep Federal agencies well informed about their Federal consistency process throughout the development of that process and any subsequent changes.

States may wish to enter into MOUs with Federal agencies. States should work closely with Federal agencies to draft a MOU which accurately reflects the goals and objectives of the State's nonpoint source management program.

Continued reporting by States under 303(d) and 305(b) should reflect the progress being made by Federal agencies. Information may be shared with Federal agencies and used to further the dialogue between State and Federal agencies. EPA encourages the involvement of both State water quality and natural resource agencies in reviewing monitoring and assessment plans of Federal agencies, as well as joint, cooperative field audits.

B. EPA Regional Offices

At the request of the State, EPA Regional Offices (NPS coordinators) will assist the State lead NPS agency to identify at the Regional level major Federal assistance programs and development projects that are potentially inconsistent with State NPS Management Programs or that could be used to support these Management Programs.

Each EPA Regional Office will be responsible for transmitting to EPA Headquarters the initial lists of Federal assistance programs and development projects provided by each State in its Management Program. Each EPA Regional Office should also provide any updates subsequently submitted by the States.

When a State informs the EPA Regional Office of an unresolved conflict with a Federal agency and request assistance, the Regional Office may decide to work with the lead State NPS agency and the appropriate Federal agency to attempt resolution of unresolved conflicts.

C. EPA Headquarters

In accordance with Section 319(k), upon approval of a State NPS management program modification or upgrade, EPA Headquarters will transmit to OMB and the appropriate

Federal departments and agencies the States' lists of Federal assistance programs and development projects will be reviewed for Federal consistency by EPA. EPA will work with States to encourage consistency among States in their Federal consistency process, so that Federal agencies will be able to adequately respond to the concerns of the State. EPA will also work with Federal agencies to help interpret State guidelines for Federal consistency with their nonpoint source management programs.

When an EPA Regional Office notifies EPA Headquarters of the need to elevate a Federal consistency conflict for resolution, EPA Headquarters will provide similar written notification to the headquarters office of the involved Federal agency. This notification will include a description of the project, the conflict, the resolution efforts to date, and a recommended course of action.

EPA Headquarters (the NPS control branch) will, as necessary, provide liaison assistance in coordination with the appropriate EPA Regional office between the State and Federal agency with whom there is a consistency issues in a State NPS management program. EPA will also provide educational and technical assistance to States and Federal agencies, as needed.

D. Other Federal Agencies

The Federal consistency provision provides an opportunity for States and Federal agencies to begin communicating and cooperating on water quality issues. Federal agencies should work closely with State NPS agencies to discuss NPS issues and impacts in order to reach shared water quality goals. They should consider planning for mitigation of impacts and actively monitor those impacts in the field.

According to section 319(k), not later than sixty days after receiving notification from the EPA Administrator of which Federal assistance applications and development projects will be reviewed by a State, each Federal agency shall modify their regulations, if necessary, to permit the State to review its assistance applications and development projects, according to EO 12372. If the State identifies inconsistencies with its NPS Management Program, the Federal agency must make efforts to accommodate the State's concerns in a timely manner.

Federal agencies should make efforts to allow States to conduct Section 319 consistency reviews of assistance programs and development projects that do not fit the criteria (assistance programs and development projects which may have an effect on the States nonpoint source pollution management program *and* are currently subject to EO 12372 *or* are listed in the current Catalogue of Federal Domestic Assistance) wherever possible; and where the Federal agency determines that section 319 consistency review is not possible, the Federal agency should inform the State of any suggested alternative mechanism for State input.

EPA encourages open communication between the State NPS agency and Federal agencies during the consistency review process. Federal agencies may want to enter in to NPS MOUs with State agencies.

V. Disclaimer

This document provides guidance to States and Federal agencies exercising responsibility under Section 319 concerning the control of nonpoint source pollution. It also provides guidance to the public and the regulated community on how EPA intends to exercise its discretion in implementing the statute regarding nonpoint source pollution. The guidance is designed to implement national policy on these issues. The document is not a regulation itself. Thus, it cannot impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and State decisionmakers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. EPA may change this guidance in the future.

Appendix A

Federal Register Vol. 47, No. 137

Title 3 -- Executive Order 12372 of July 14, 1982

The Presidential Intergovernmental Review of Federal Programs

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

- (a) Utilize State processes to determine official views of State and local officials.
- (b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.
- (c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.
- (d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient, and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 Fed. Reg. 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experience with these policies, along with any suggestions for improvement, shall be included in the Director's report.

THE WHITE HOUSE July 14, 1982

Appendix B

List of Pertinent Federal Assistance Programs and Development Projects from the Catalogue of Federal Domestic Assistance

FOREST SERVICE (USDA)

- Forest Management Plans
- Timber Harvest Permits
- Grazing Permits
- Research Management Plans
- State and Private Management plans

NRCS (USDA)

- Conservation Reserve Program
- Environmental Quality Incentives Program (EQIP)
- Wetland Reserves Program
- Wetland Conservation (Swampbuster)
- Conservation Compliance
- Farmland Protection Program
- Wildlife Habitat Incentives Program
- Emergency Watershed Protection Program Floodplain Easements
- Conservation Farm Option
- Resource Conservation and Development Program
- Forestry Incentives Program
- Everglades Program

NATIONAL MARINE FISHERIES SERVICE (Commerce)

- Fisheries Management plans

COAST GUARD

- Location, design, construction or enlargement of Coast Guard Stations, bases and lighthouses
- Location, placement, or removal of navigation devices which are not part of the routine operation under the Aids to Navigation Program
- Expansion, abandonment, or designation of anchorages, lighting areas or shipping lanes and ice management practices and activities

BUREAU OF LAND MANAGEMENT (DOI)

- Watershed Projects
- Mineral Exploration and Development
- Coal, Oil, and Gas Leasing
- Coal Reclamation
- ORV Activities
- Timber Activities
- Grazing Allotment/Grazing Management/Permits Issuance
- Chemicals/Pesticides

- Area Analysis/Cumulative Impacts
- Wetlands protection
- Riparian Management Plans
- Hydrologic Modification
- Transportation plans
- ACEC plans
- BUREAU OF RECLAMATION (DOI)
 - Irrigation Development
- FISH AND WILDLIFE SERVICE (DOI)
 - Management of National Wildlife Refuges and proposed acquisitions
- NATIONAL PARK SERVICE (DOI)
 - National Park Seashore management and proposed acquisitions
 - Wildlife Management
 - Grazing Management
 - Abandoned Mines Management
- FEDERAL ENERGY REGULATORY COMMISSION
 - Dam relicensing
- DEPARTMENT OF DEFENSE
 - Natural resource management plans and projects
 - Military Construction Projects
 - Facilities Development Plans and Projects
 - Land and Water Based Military Training Plans and Exercises
 - Plans and Projects to Reduce Specific Nonpoint Source Problems
 - Projects under the Defense Environmental Restoration Program
 - Dams or Flood Control Works
 - Ice Management Practices
 - Land Acquisition for Spoil Disposal or Other Purposes
 - Selection of open Water Disposal Sites
- FEDERAL HIGHWAY ADMINISTRATION (DOT)
 - Highway construction/reconstruction
- ISTEA
- FEDERAL AVIATION ADMINISTRATION (DOT)
 - Location, design, construction, maintenance, and demolition of federal aids to air navigation
 - Airport and Tarmac Runoff
- NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (Commerce)
 - Coastal Management Programs

Appendix C

List of State Single Points of Contact

In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," Section 4, the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. This listing is the OFFICIAL OMB LISTING. This listing is also published in the Catalogue of Federal Domestic Assistance biannually. Updates of this list can be found on the Internet: <http://www.ntia.doc.gov/otiahome/spoc.html>

In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs", in this listing represents the designated State Single Points of Contact. The Office of Management and Budget point of contact for updating this listing is: Sherron Duncan (202) 395-3914. The jurisdictions not listed no longer participate in the process. These include: Alaska; American Samoa; Colorado; Connecticut; Kansas; Hawaii; Idaho; Louisiana; Massachusetts, Minnesota; Montana; Nebraska; Oklahoma; Oregon; Pilau; Pennsylvania; South Dakota; Tennessee; Virginia; and Washington. (It is important to note that Colorado, Montana, and South Dakota all have NPS management programs with a process formally adopted and in place which supersedes this.) This list is based on the most current information provided by the States.

ARIZONA

Joni Saad
Arizona State Clearinghouse
3800 N. Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone (602) 280-1315
FAX: (602) 280-1305

ARKANSAS

Mr. Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services,
Department of Finance
and Administration
1515 W. 7th St., Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682-1074
FAX: (501) 682-5206

ALABAMA

Jon C. Strickland
Alabama Department of Economic and
Community Affairs, Planning and Economic
Development Division
401 Adams Avenue
Montgomery, AL 36103-5690
Telephone: (205) 242-5483
FAX: (205) 242-5515

CALIFORNIA

Grants Coordinator
Office of Planning & Research
1400 Tenth Street, Room 121
Sacramento, California 95814
Telephone (916) 323-7480
FAX (916) 323-3018

DELAWARE

Francine Booth
State Single Point of Contact
Executive Department
Thomas Collins Building
P.O. Box 1401
Dover, Delaware 19903
Telephone: (302) 739-3326
FAX: (302) 739-5661

DISTRICT OF COLUMBIA

Charles Nichols
State Single Point of Contact
Office of Grants Mgmt. & Development.
717 14th Street, N.W. - Suite 500
Washington, D.C. 20005
Telephone: (202) 727-6554
FAX: (202) 727-1617

FLORIDA

Florida State Clearinghouse
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399-2100
Telephone: (904) 922-5438
FAX: (904) 487-2899

GEORGIA

Tom L. Reid, III
Administrator
Georgia State Clearinghouse
254 Washington Street, S.W. - Room 401J
Atlanta, Georgia 30334
Telephone: (404) 656-3855/ (404)656-3829
FAX: (404) 656-7938

ILLINOIS

Barbara Beard
State Single Point of Contact
Department of Commerce and Community
Affairs
620 East Adams
Springfield, Illinois 62701
Telephone: (217) 782-1671
FAX: (217) 534-1627

INDIANA

Amy Brewer
State Budget Agency
212 State House
Indianapolis, Indiana 46204
Telephone: (317) 232-5619
FAX: (317) 233-3323

IOWA

Steven R. McCann
Division for Community Assistance, Iowa
Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: (515) 242-4719
FAX: (515) 242-4859

KENTUCKY

Ronald W. Cook
Office of the Governor
Department of Local Government
1024 Capitol Center Drive
Frankfort, Kentucky 40601-8204
Telephone: (502) 573-2382
FAX: (502) 573-2512

MAINE

Joyce Benson
State Planning Office
State House Station #38
Augusta, Maine 04333
Telephone: (207) 287-3261
FAX: (207) 287-6489

MARYLAND

William G. Carroll
Manager, State Clearinghouse for
Intergovernmental Assistance,
Maryland Office of Planning
301 W. Preston Street - Room 1104
Baltimore, Maryland 21201-2365
Staff Contact: Linda Janey
Telephone: (410) 225-4490
FAX: (410) 225-4480

MICHIGAN

Richard Pfaff
Southeast Michigan Council of Governments
1900 Edison Plaza
660 Plaza Drive
Detroit, Michigan 48226
Telephone: (313) 961-4266
FAX: (313) 961-4869

MISSISSIPPI

Cathy Mallette
Clearinghouse Officer
Department of Finance and Administration
455 North Lamar Street
Jackson, Mississippi 39202-3087
Telephone: (601) 359-6762
FAX: (601) 359-6764

MISSOURI

Lois Pohl
Federal Assistance Clearinghouse
Office Of Administration
P.O. Box 809
Room 760, Truman Building
Jefferson City, Missouri 65102
Telephone: (314) 751-4834
FAX: (314) 751-7819

NEVADA

Department of Administration
State Clearinghouse
Capitol Complex
Carson City, Nevada 89710
Telephone: (702) 687-4065
FAX: (702) 687-3983

NEW HAMPSHIRE

Jeffrey H. Taylor, Director
New Hampshire Office of State Planning
Attn: Intergovernmental Review Process
Mike Blake
2 ½ Beacon Street
Concord, New Hampshire 03301
Telephone: (603) 271-2155
FAX: (603) 271-1728

NEW JERSEY

Gregory W. Adkins, Assistant Commissioner
New Jersey Department of Community
Affairs
Please direct all correspondence and
questions about intergovernmental review to:
Andrew J. Jaskolka
State Review Process
Intergovernmental Review Unit
CN 800, Room 813A
Trenton, New Jersey 08625-0800
Telephone: (609) 292-9025
FAX: (609) 633-2132

NEW MEXICO

Robert Peters
State Budget Division
Room 190 Bataan Memorial Building
Santa Fe, New Mexico 87503
Telephone: (505) 827-3640

NEW YORK

New York State Clearinghouse
Division of the Budget

State Capitol
Albany, New York 12224
Telephone: (518) 474-1605

NORTH CAROLINA
Chrys Baggett, Director
N.C. State Clearinghouse
Office of the Secretary of Administration.
116 West Jones Street
Raleigh, North Carolina 27603-8003
Telephone: (919) 733-7232
FAX: (919) 733-9571

NORTH DAKOTA
North Dakota Single Point of Contact
Office of Intergovernmental Assistance
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0170
Telephone: (701) 224-2094
FAX: (701) 224-2308

OHIO
Larry Weaver
State Single Point of Contact
State Clearinghouse
Office of Budget and Management
30 East Broad Street, 34th Floor
Columbus, Ohio 43266-0411
Please direct correspondence and questions
about intergovernmental review to:
Linda Wise
Telephone: (614) 466-0698
FAX: (614) 466-5400

RHODE ISLAND
Daniel W. Varin
Associate Director
Department of Administration
Division of Planning
One Capitol Hill, 4th Floor
Providence, Rhode Island 02908-5870
Telephone: (401) 277-2656

FAX: (401) 277-2083
Please direct correspondence and questions
to: Review Coordinator
Office of Strategic Planning

SOUTH CAROLINA
Omeagia Burgess
State Single Point of Contact
Grant Services
Office of the Governor
1205 Pendleton Street - Room 477
Columbia, South Carolina 29201
Telephone: (803) 734-0494
FAX: (803) 734-0385

TEXAS
Tom Adams
Governors Office
Director, Intergovernmental Coordination
P.O. Box 12428
Austin, Texas 78711
Telephone: (512) 463-1771
FAX: (512) 463-1888

UTAH
Carolyn Wright
Utah State Clearinghouse
Office of Planning and Budget
Room 116 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1535
FAX: (801) 538-1547

VERMONT

Nancy McAvoy
State Single Point of Contact
Pavilion Office Building

109 State Street
Montpelier, Vermont 05609
Telephone: (802) 828-3326
FAX: (802) 828-3339

WEST VIRGINIA

Fred Cutlip, Director
Community Development Division W.
Virginia
Development Office Building #6, Room 553
Charleston, West Virginia 25305
Telephone: (304) 558-4010
FAX: (304) 558-3248

WISCONSIN

Martha Kerner
Section Chief, State/Federal Relations
Wisconsin Department of Administration
101 East Wilson Street - 6th Floor
P.O. Box 7868
Madison, Wisconsin 53707
Telephone: (608) 266-2125
FAX: (608) 267-6931

WYOMING

Sheryl Jeffries
State Single Point of Contact
Office of the Governor
State Capitol, Room 124
Cheyenne, WY 82002
Telephone: (307) 777-5930
FAX: (307) 632-3909

Mr. Giovanni T. Sgambelluri
Director
Bureau of Budget and Management
Research
Office of the Governor
P.O. Box 2950
Agana, Guam 96910
Telephone: 011-671-472-2285
FAX: 011-671-472-2825

PUERTO RICO

Norma Burgos/Jose E. Caro
Chairwoman/Director
Puerto Rico Planning Board
Federal Proposals Review Office
Minillas Government Center
P.O. Box 41119
San Juan, Puerto Rico 00940-1119
Telephone: (809) 727-4444 or
(809) 723-6190
FAX: (809) 724-3270 or (809) 724-3103

NORTH MARIANA ISLANDS

Mr. Alvaro A. Santos, Executive Officer
Office of Management and Budget
Office of the Governor
Saipan, MP 96950
Telephone: (670) 664-2256
FAX: (670) 664-2272
Contact person: Ms. Jacoba T. Seman
Federal Programs Coordinator
Telephone: (670) 664-2289
FAX: (670) 664-2272

TERRITORIES

GUAM

VIRGIN ISLANDS

Jose George
Director, Office of Management and Budget
#41 Norregade Emancipation Garden
Station
Second Floor
Saint Thomas, Virgin Islands 00802
Please direct all questions and
correspondence about
intergovernmental review to:
Linda Clarke
Telephone: (809) 774-0750
FAX: (809) 776-0069

APPENDIX D

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE STATE OF NEW MEXICO
AND
THE U.S. DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
NEW MEXICO STATE OFFICE

This Memorandum of Understanding is entered into by and between the Environment Department of the State of New Mexico, hereinafter referred to as NMED, and the U.S. Department of Interior, Bureau of Land Management, referred to as BLM.

PURPOSE: To respond to the water quality objective defined by Congress in the Federal Water Pollution Control Act (Clean Water Act or CWA), as amended. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters;

To respond to the goals and policies of the State of New Mexico as defined in the New Mexico Nonpoint Source Pollution Management Program developed pursuant to Section 319 of the CWA; and

To identify the responsibilities and activities to be performed by each agency in carrying out the State Water Quality Management Plan developed pursuant to Section 208 of the CWA and Nonpoint Source Management Program as related to activities on lands administered by the BLM.

WHEREAS, the New Mexico Water Quality Act (74-6-1 et seq. , NMSA 1978) creates the New Mexico Water Quality Control Commission (Commission) and identifies the Commission as the State water pollution control agency for all purposes of the CWA; and

WHEREAS, the Commission has designated the NMED as the State's lead agency to implement Sections 208 and 319 of the CWA; and

WHEREAS, the State of New Mexico authorizes NMED to enter into agreements with a Federal agency for the purpose of water quality management; and

WHEREAS, the BLM is authorized and directed to conserve public land natural resources managing for multiple uses; Congress has

provided direction for these practices in the Federal Land Policy and Management Act (FLPMA) of October 21 1976 and the National Environmental Policy Act (NEPA) of January 1, 1969. Multiple executive orders and Bureau policy aid this direction; and

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WHEREAS, it is BLM policy to consult, cooperate, and coordinate with neighboring land owners and agencies; and

WHEREAS, the BLM is authorized and directed to administer development of mineral resources on lands which the Federal government retains the subsurface mineral estate. Congress has provided direction for this authority in the Mineral Leasing Act of 1920 as amended, the 1972 Mining Law for Locatable Minerals, multiple executive orders, and BLM policy; and

WHEREAS, the BLM, under Section 313 of the CWA, Executive Order 12098, approved October 13, 1978 and Executive Order 12372, approved July 14, 1992, is directed to meet Federal, State, interstate, and local substantive and procedural requirements respecting control and abatement of water pollution to the same extent as a nongovernmental entity; and

WHEREAS, the Commission has designated the BLM as a management agency for water quality protection within the context of the New Mexico Water Quality Management Plan and the New Mexico Nonpoint Source Management Program.

NMED AND BLM AGREE:

a. That the most practical and effective means of controlling potential nonpoint source water pollution from all properties administered by BLM is through development and implementation of preventative or mitigative land management practices, generally referred to as Best Management Practices (BMPs) and to ensure control of such nonpoint source pollutants through the practice and monitoring of these BMPs.

b. To develop and implement procedural methods and agreements to minimize duplication of effort and facilitate complementary nonpoint source water pollution control and abatement programs.

c. To jointly identify existing or potential nonpoint source water pollution problems on all properties administered by BLM.

d. To coordinate present and proposed water quality monitoring activities within all properties administered by BLM; to schedule cooperative monitoring efforts; to share data collection and analysis responsibilities; and to routinely make available any unrestricted water quality data and information.

e. To use such water quality information for validating existing water quality criteria and designated uses and when appropriate developing the data into proposed standards revisions for consideration by the Commission during regularly scheduled water quality standards reviews.

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f. To provide, on request, technical expertise and support not otherwise available to the other party, to the extent the supplying party's program priorities, budget, and availability of expertise allow.

g. To meet at least annually, to maintain coordination and communication, report on water quality management progress and problems, review proceedings under this agreement, and consider/negotiate revisions and amendments that shall become effective after written approval by both parties.

h. To manage all resources and operate all programs for which they are responsible in a manner that seeks to achieve Federal water quality and State water quality standards.

NMED AGREES TO:

a. Recommend that the Commission continue its designation of the BLM as the designated management agency for water quality on all properties administered by BLM within the context of the New Mexico Nonpoint Source Pollution Management Program, as long as the BLM diligently seeks to meet Federal and State water quality mandates.

b. Recommend that the Commission incorporate into State water quality plans, including Section 208 and 319 Plans, the BLM responsibility for determination and implementation of BMP's.

c. Coordinate State water quality management planning with the BLM when properties administered by BLM are involved

d. Provide drafts of NMED proposed water quality laws, regulations, standards, and policies to the BLM for review and

comment during their development.

e. Provide the BLM with appropriate State and local BMP's accepted for minimizing nonpoint source water pollution as they become available.

f. Participate in the BLM Coordinated Resource Management Plan (CRMP) process in a manner consistent with NMED's regulatory responsibility and authority.

g. Consult with the BLM and make recommendations on necessary projects, activities, or BMP changes through informal discussions and the CRMP process.

h. Participate in monitoring with the BLM and provide consultation on appropriate mitigation, where necessary.

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i. Review water quality standards and designated uses when the BLM and/or NMED monitoring indicate that criteria or uses may not be attainable.

j. Review and comment on appropriate BLM documents on request.

k. Participate with the BLM in evaluating the validity of nonpoint source pollution complaints.

l. Join with the BLM in describing to other agencies or citizens the results of cooperative investigations or reviews of nonpoint source pollution complaints.

m. Meet legally established BLM procedural time constraints where applicable.

BLM AGREES TO:

a. Serve as the Designated Management Agency within the context of the New Mexico Water Quality Management Program and the New Mexico Nonpoint Source management program.

b. Recognize New Mexico identified designated uses of water and Nonpoint Source Management Program objectives.

. Ensure all future Land Use Plans, Environmental Impact Statements, and surface disturbing activity plans meet

requirements of State Water Quality Management Plans and the Nonpoint Source Management Program developed pursuant to Federal regulations, the CWA, and other applicable requirements placed on the State. Review and necessary revisions of existing plans will occur on a schedule that will be negotiated between NMED and BLM.

d. Ensure that all project planning (Environmental Assessments, Categorical Exclusions, etc.) and implementation of projects which could result in nonpoint source pollution of surface or ground waters, contain site-specific BMP's where needed to meet the purpose of this agreement. Project analysis will include technical, economic, and institutional feasibility regarding water quality impacts from the proposed activity in the selection of BMP's.

e. Ensure that all new and renewed land use authorizations, easements, rights-of-way documents, allotment management plans, term-grazing permits, and other agreements involving permitted activity on properties administered by BLM, contain provisions for compliance with water pollution control and abatement statutes, regulations, standards and ordinances (Federal, State, and local) promulgated under the authority of the CWA as an enforceable condition to those potential agreements.

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f. Identify program elements needed to meet state programs adopted pursuant to sections 208 and 319 of the CWA and incorporate these into BLM program planning and budgeting systems so that personnel and funds are available to respond to needs.

g. Evaluate environmental effects as part of the land management process, and to expeditiously and effectively mitigate any additional adverse cumulative environmental effects through standard BLM mitigation practices, consideration of the total number of activities within the watershed, and relative placement of the activity to other activities within the watershed.

h. Consult with NMED in situations where the BLM does not manage the entire watershed and it has been determined there will/or may be a significant water quality impact due to an activity (initiated by any land owner), and that the impact will/or may preclude attainment of water quality standards on or off properties administered by BLM, and/or the water does not currently meet water quality standards.

i. Implement a BMP monitoring strategy that includes

implementation monitoring to ensure application of BMP's as specified in project work schedules, and effectiveness monitoring on selected activities to determine if BMP's are meeting resource, aquatic, and water quality goals.

j. Adjust recommendations and BMP's when they are found to be ineffective in protecting identified designated uses and water quality criteria or where unanticipated problems are detected.

k. Provide NMED an annual list of all proposed project planning issues for New Mexico BLM at the beginning of each fiscal year. NMED can then call for project documents they wish to review. BLM will also coordinate with NMED on unanticipated documents or plans that evolve through the year. This procedure is intended to improve on the ground management with regards to BMP implementation, NPS control, and monitoring techniques. The process will help close the NPS feedback loop, and serve as technology transfer for all parties concerned.

l. Implement water quality improvement projects identified in BLM and cooperative State and local water quality management plans in a timely manner consistent with Land Use Plan implementation, and in accord with available funding.

m. Conduct annual NPS program and activity reviews using standard BLM program review procedures.

n. Provide NMED with an annual general assessment of water quality accomplishments, monitoring results, problems, and priorities. Report will be submitted by July 30 each year.

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o. Store on a quarterly basis water quality data resulting from all BLM water quality monitoring in the Environmental Protection Agencies' Water Quality Storage and Retrieval System.

p. Use in-service education and training to increase employee awareness of, and sensitivity to, the importance of maintaining and improving water quality and of the requirements of State and Federal water quality regulations and standards

RESOLUTION OF COMPLAINTS AND STANDARD VIOLATIONS:

The BLM agrees to assure compliance with New Mexico water quality standards to the extent water quality is affected by BLM activities and to take the following actions when it has reason

to believe that exceedances of water quality standards are occurring or when notified by NMED, or another Federal, State, - local government agency, or citizen that water quality standard violations are suspected due to BLM actions:

- a. Contact when appropriate or meet with NMED to evaluate the validity of the complaint.
- b. Conduct a plan-in-hand review of the activity site within 10 days, or an agreed to time, after receiving the complaint to determine if BMP's were implemented according to the plan, contract, or permit.
- c. Evaluate BMP's to determine if they are functioning as planned, and if not, through the interdisciplinary process, design and expeditiously implement modifications to assure proper functioning conditions.
- d. Evaluate the activity or project site using the interdisciplinary process to determine the need for additional mitigation measures or conservation practices.
- e. Modify contracts and/or project plans to assure that any additional NPS measures, prescribed through the interdisciplinary process, are implemented.
- f. Modify project implementation plans to stop the action causing the violation, if the standard violations persist.
- g. Cooperate with NMED in effecting necessary remediation.

THE NMED AND BLM FURTHER AGREE:

- a. That nothing herein shall be construed in any way as limiting the authority of the NMED in carrying out their legal responsibilities for management or regulation of water quality;

MOU No. NM-355

- b. That nothing herein shall be construed in any way as limiting the legal authority of the BLM in connection with the proper administration and protection of all properties administered by BLM in accordance with Federal laws and regulations;
- c. That nothing in this Agreement shall be construed as

obligating the BLM or NMED to expend funds in any contract or other obligations for future payment or service in excess of those available or authorized for expenditure;

d. That this Agreement shall become effective as soon as it is signed by the parties hereto and filed with the New Mexico Secretary of State and shall continue in force unless terminated by either party upon 30 days notice in writing to the other of intent to terminate upon an indicated date;

e. That this Agreement may be amended upon approval of both parties by executing an amendment containing the desired amendments; and

f. That each and every provision of the Agreement is Subject to the laws of the State of New Mexico, the laws of the United States, the regulations of the Secretary of Interior, and the regulations of the State of New Mexico.

In witness thereof, the parties hereto have caused this Management Agreement to be executed.

APPROVED:

State Director, New Mexico
Bureau of Land Management

Larry L. Woodard

2/28/92
Date

Secretary, State of New Mexico
Environment Department

Judith M. Espinosa

3/2/92
Date

Appendix E

Executive Order 12088

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, as amended by
Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2928, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 22 of the Toxic Substances Control Act (15 U.S.C. 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300j-6),

Section 118 of the Clean Air Act, as amended (42 U.S.C. 7418(b)), Section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6961), and Section 301 of Title 3 of the United States Code, and to ensure Federal compliance with applicable pollution control standards, is hereby ordered as follows:

1-1. APPLICABILITY OF POLLUTION CONTROL STANDARDS

1-101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1-102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to, but not limited to, the following:

- (a) Toxic Substances Control Act (15 U.S.C. 2601 et seq.).
- (b) Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).
- (c) Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300f et seq.).
- (d) Clean Air Act, as amended (42 U.S.C. 7401 et seq.).
- (e) Noise Control Act of 1972 (42 U.S.C. 4901 et seq.).
- (f) Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.).
- (g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(h); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays approved by the President on January 26, 1978 and published at page 4377 of the Federal Register on February 1, 1978).
- (h) Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411-1421, 1441-1444 and 16 U.S.C. 1431-1434).
- (I) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.).

1-103. 'Applicable pollution control standards' means the same substantive, procedural, and other requirements that would apply to a private person.

1-2. AGENCY COORDINATION

1-201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1-202. Each Executive agency shall consult with the Administrator and with State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

1-3. TECHNICAL ADVICE AND OVERSIGHT

1-301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1-302. The administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

1-4. POLLUTION CONTROL PLAN

1-401. Each Executive agency shall submit to the Director of the Office of Management and Budget, through the Administrator, an annual plan for the control of environmental pollution. The plan shall provide for any necessary improvement in the design, construction, management, operation, and maintenance of Federal facilities and activities, and shall include annual cost estimates. The Administrator shall establish guidelines for developing such plans.

1-402. In preparing its plan, each Executive agency shall ensure that the plan provides for compliance with all applicable pollution control standards.

1-403. The plan shall be submitted in accordance with any other instructions that the Director of the Office of Management and Budget may issue.

1-5. FUNDING

1-501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.

1-502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

1-6. COMPLIANCE WITH POLLUTION CONTROLS

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

1-602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1-603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statutes and regulations.

1-604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1-605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

1-7. LIMITATION ON EXEMPTIONS

1-701. Exemptions from applicable pollution control standards may only be granted under statutes cited in Section 1-102(a) through 1-102(f) if the President makes the required appropriate statutory determination: that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1-702. The head of an Executive agency may, from time to time, recommend to the President through the Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

1-703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefore.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

1-8. GENERAL PROVISIONS

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

1-803. Executive Order No. 11752 of December 17, 1973, is revoked.

Appendix F

An Overview of Other Consistency Review Mechanisms:

A. NEPA

The National Environmental Policy Act (NEPA), [42 U.S.C. 4321 et seq], was signed into law on January 1, 1970. The Act establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment and it provides a process for implementing these goals within federal agencies. The NEPA process is intended to provide a framework to make environmental information available before decisions are made.

Federal agencies must prepare an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) for all major actions significantly affecting the environment. Upwards of 50,000 EAs are prepared each year to evaluate potential environmental impacts and to determine the need for preparation of EISs. In contrast, only several hundred EISs are prepared each year, for projects viewed as having the potential for significant environmental impact.

NEPA applies only to federal actions; direct federal actions, financial assistance, licences, and permits. Federal agencies are required to integrate the NEPA process into their planning management at the earliest possible time. The NEPA process ensures an analysis of direct, indirect and cumulative impacts; an analysis of reasonable alternatives; and public involvement in the evaluation. Grants awarded under Section 319 are not subject to NEPA according to Section 511 (c)(1) of the Clean Water Act: "...no action of the Administrator taken pursuant to this Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852)." However, activities that receive 319 funding may be subject to NEPA for other reasons (e.g., they are part of a project that is receiving funding from other Federal agencies).

While NEPA requires Federal agencies "to respond" to comments received during the public participation process and to explain the Federal agency's response, EO 12372 requires Federal agencies "make efforts to accommodate" State concerns. Accordingly, the requirements incumbent on Federal agencies under the two processes are similar, but not identical. Therefore, whenever possible, the EO 12372 process should be used as a vehicle for a State's review of NEPA documents to affect the "accommodate or

explain" provisions of EO 12372.

When a State lead NPS agency use EO 12372 process for review of NEPA documents it should specify in its section 319(b)(2)(F) list those Federal programs whose EAs/EISs (whether programmatic or project-specific) it would like to review. The lead NPS agency should also submit this list to its State clearinghouse to ensure that appropriate EISs are routed to the lead NPS agency for review and comment.

The lead NPS agency may also notify each listed Federal agency of its desire to receive requests for scoping comments and to review EISs submitted under that agency's programs. The lead NPS agency may also identify those types of projects for which it would like to receive EAs and other environmental documentation such as Findings of No Significant Impact (FONSI).

In preparing its review of the draft EIS, the lead NPS agency should evaluate the adequacy of the draft EIS, identify the severity of the NPS impacts, and determine any potential NPS impacts that have not been identified in the document.

B. Federal Agency Environmental Program Planning Process (FEDPLAN)

Authority for the FEDPLAN process (previously referred to as the A-106 process) originated in OMB Circular A-106. Authority for the process now rests completely in EO 12088 (See Appendix E) which is much broader in scope than the previous OMB circular. The primary objective of FEDPLAN is to provide a mechanism for characterizing environmental activities, establishing priorities, and identifying the resources needed to sustain compliance with environmental requirements.

The primary authority for the FEDPLAN process is based on Executive Order 12088 "Federal Compliance with Pollution Control Standards" (October 13, 1978) and CWA Section 313. Requirements for environmental planning, budgeting and reporting are also found in Executive Order 12856 "Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements" and OMB Circular A-11. Executive Order 12088 states the following:

1-501. The Head of each Executive agency shall ensure that sufficient funds for
compliance with applicable pollution control standards are requested in the agency
budget.

1-502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purposes unless permitted by law and specifically approved by the Office of Management and Budget.

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include any implementation schedule for coming into compliance as soon as practicable.

FEDPLAN requires Federal agencies to identify facilities, including lands and other property, which are not in compliance with Federal, State and local pollution abatement standards, and to

provide a five-year pollution abatement control plan which includes annual cost estimates for bringing facilities into compliance.

EPA may work with States to help identify applications of the FEDPLAN process to identify and correct NPS problems. For example, some of EPA's Regional Offices provide to their States in January of each year copies of Federal agencies' annual FEDPLAN submissions for review and comment. States which are not routinely receiving FEDPLAN reports for review may request them from the EPA Regional Federal Facilities Coordinator.

States should include existing or potential NPS problems related to Federal facilities and lands in their section 319 Annual Report, in Management Program updates and to the Regional Office of the Federal agency responsible for the project. Reviews conducted through the EO 12372 and NEPA processes may also reveal to the State upcoming projects which would be well-suited to the development of a five-year pollution control plan under FEDPLAN.

C. Section 313 of the Clean Water Act: Federal Facilities Pollution Control

Section 313. (a) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to , and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any record keeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, offices, agents, or employees under any law or rule.

Section 313 requires Federal agencies that (1) have jurisdiction over any property or facility, or (2) engage in any activity that results or may result in the discharge or runoff of pollutants, to comply with all Federal, State and local requirements with regard to water pollution control in the same manner and to the same extent as any nongovernmental entity. Federal agencies that are not in compliance with any such requirement should follow the process outlined in Executive Order 12088 (Appendix E) and FEDPLAN (above).

D. Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), section 307 (16 U.S.C. § 1456), requires Federal agencies, applicants for federal licenses or permits, and state agencies and local governments applying for federal financial assistance, to conduct their activities consistent with federally approved state coastal management programs (CMPs). The CZMA Federal consistency requirement applies to federal actions, regardless of location, that are reasonably likely to affect any land or water use or natural resource of a state's coastal zone. National Oceanic and Atmospheric Administration (NOAA) regulations detail the CZMA consistency process (15 C.F.R. part 930). In addition, State CMP agencies have established procedures to review such federal actions. The lead NPS agency and the State CMP agency may wish to coordinate their respective consistency reviews of projects and applications affecting both the NPS and the CZMA Management Programs.

The key to successful CZMA consistency reviews is early notification and coordination between Federal agencies, applicants, and State CMP agencies. Coordination and

cooperation is also improved when Federal agencies and State CMP agencies agree on consistency procedures for specific activities. The successful use of consistency by States is also due, in large part, to the regular and consistent use of consistency. Examples (taken from the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Federal Consistency Workbook) include:

California: California is one of the coastal states that is well known for its use of consistency. California has asserted consistency to address the impact of Area Contingency Plans and Vessel Response Plans required by the Oil Pollution Act of 1990. California also used consistency to ensure that the closure and re-use of a large military base addressed coastal protection and recreation policies. California has also used consistency to address the impacts from commercial spaceflights on beach access, ocean acoustical experiments on marine mammals, artificial reef construction on existing habitat and ecology, etc.

Massachusetts: Massachusetts has used consistency to make significant changes in a large ocean dump-site designation by EPA, and a sewer outfall located in the neighboring State of New Hampshire that would impact Massachusetts beaches. Massachusetts also used consistency to great success when the General Services Administration (GSA) proposed to acquire property along the Boston waterfront for a new federal courthouse. As a result of the consistency process, GSA and the State Coastal Management Program negotiated a redesigned courthouse with a host of public amenities and the courthouse now has tremendous public and State support. Massachusetts and the Corps of Engineers have also developed a programmatic general permit (PGP) to reduce the regulatory burden on projects of minimal environmental impact. Projects that are eligible for a PGP are not generally required to complete a consistency review.

E. Section 320 - National Estuary Programs

Also relevant to coastal States is the National Estuary Program established in section 320 of the CWA, as amended. This section provides for review of Federal financial assistance programs and Federal development projects using EO 12372 procedures to ascertain Federal consistency (under a Federal consistency provision almost identical to that contained in Section 319) with estuarine management plans developed under section 320 of the CWA.

The Management Conferences designated by each State according to Section 320 are required under Purposes 5 and 7 to conduct a consistency review as part of their management plan. Purpose five states, "The purposes of any management conference convened with respect to an estuary under this subsection shall be to...5)develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference..[and] 7) review all Federal financial assistance programs and Federal

development projects in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section." Management plans submitted to EPA for approval must include a Purpose 7 consistency review.

EPA has developed guidance to NEP management conferences on fulfilling the requirements of Purpose 7 to conduct a consistency review of Federal programs. The guidance indicates that Management Conferences need to do a one-time review of projects for consistency with the management of projects for consistency with the management plan, as well as to conduct an on-going review of potential projects once the management plan is implemented. The guidance suggests that NEPs use existing review mechanisms to accomplish Purpose 7, such as State clearinghouse and coastal zone consistency review processes, not to establish a new process. Any inconsistencies between proposed federal projects and NEP management plans would be resolved in accordance with the process used, i.e., State clearinghouse has its own mechanism.

F. Section 303(d) of the Clean Water Act: Total Maximum Daily Loads

A total maximum daily load (TMDL) is a tool for implementing State water quality standards and is based on the relationship between pollution sources and in-stream water quality conditions. The TMDL establishes the allowable loadings or other quantifiable parameters for a waterbody and thus establishes the basis for States to establish water quality-based controls for both point and nonpoint sources. These controls should provide the pollution reduction necessary for a waterbody to meet water quality standards.

Section 303(d) of the Clean Water Act and 40 CFR Part 130 establish the TMDL process to provide for more stringent water quality-based controls when technology-based controls for point sources are inadequate to achieve State water quality standards. The TMDL process affords a broad opportunity for States to work with all affected parties in the watershed, including Federal agencies, to develop technically sound and legally defensible decisions for

attaining and maintaining water quality standards. Further, once developed, the TMDL provides a road map for implementing

both the point and nonpoint source controls that will achieve water quality standards.

G. Section 401 Certification

Section 401. (a)(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 301(b) and 302, and there is not an applicable standard under sections 306 and 307, the State shall so certify, except that any such certification shall not be deemed to satisfy section 511(c) of this Act. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

Section 401 provides that any applicant for a federal license or permit to conduct any activity which may result in a discharge into navigable waters must provide the licensing or permitting agency a State certification that the discharge will comply with State water quality standards. The State may waive, condition, or deny its certification. The extent to which this certification authority applies to nonpoint source

discharges is currently being considered by the federal courts.

Appendix G
Provision in State Management Programs
Used for Consistency Reviews

Wyoming NPS Management Program
Chapter IV
Federal Facilities Coordination

The Water Quality Division does not consider Federal facilities, agencies, or lands to be any different from other facilities or landowners in terms of compliance with Wyoming Water Quality Rules and Regulations. The Environmental Quality Act and the rules do not contain exemptions for federal facilities. The Clean Water Act, Executive Order 12088 and the EPA Federal Facilities Compliance Strategy clearly require Federal agencies and facilities to comply with all federal, State, and local pollution control laws.

The Clean Water Act also requires states to identify federal financial assistance programs and development projects for which the state will review individual assistance applications or development projects for their effect on water quality...Coordination for review of these activities is carried out by the Governor's State Planning Coordinator's (SPC) Office. The SPC Office is responsible for operating and maintaining the Wyoming Clearinghouse Review Process, which replaces the Office of Management and Budget A-95 Process.

The Water Quality Division attempts to review all Environmental Impact Statements, Environmental Assessments, Scoping Statements, Resource Management Plans, Forest Plans and other environmental documents of potential water quality impacts. Federal agencies submit these documents to the SPC Office for distribution to the appropriate state agencies. Comments are submitted through the SPC Office, and reflect the impact of the proposed activity on each state agency's mandated program. The Governor's position on the proposal is developed as a result of the overall needs of the state, benefits/detriments to the state, and issues and concerns raised through the technical review by each state agency.

Appendix H
The Nine Key Elements of a State NPS Management Program
(Established in the Nonpoint Source Program and Grants
Guidance)

In May 1996, EPA published the National NPS Program and Grants Guidance. This guidance, published in cooperation with the States and formally endorsed by the Association of State and Interstate Water Pollution Control Administrators, called upon States to review their NPS programs and to upgrade them as necessary to meet the following nine key elements of effective State NPS programs:

- 1) The State programs contains explicit short- and long-term goals, objectives and strategies to protect surface and ground water.
- 2) The State strengthens its working partnerships and collaboration with appropriate State, interstate, Tribal, regional, and local entities (including conservation districts), private sector groups, citizens groups, and Federal agencies.
- 3) The State uses a balanced approach that emphasizes both State-wide nonpoint source programs and on-the-ground management of individual watersheds where waters are impaired or threatened.
- 4) The State program (a) abates known water quality impairments resulting from nonpoint source pollution and (b) prevents significant threats to water quality from present and future activities.
- 5) The State program identifies waters and their watersheds impaired or threatened by nonpoint source pollution and identifies important unimpaired waters that are threatened or otherwise at risk. Further, the State establishes a process to progressively address these identified waters by conducting more detailed watershed assessments and developing watershed implementation plans, and then by implementing the plans.
- 6) The State reviews, upgrades, and implements all program components required by section 319(b) of the Clean Water Act, and establishes flexible, targeted, iterative approaches to achieve and maintain beneficial uses of water as expeditiously as practicable. The State programs include:

A mix of water quality-based and/or technology-based programs designed to achieve and maintain beneficial uses of water; and

A mix of regulatory, non-regulatory, financial and technical assistance as needed to achieve and maintain beneficial uses of water as expeditiously as practicable.

7) The State identifies Federal lands and activities which are not managed consistently with State nonpoint source program objectives. Where appropriate, the State seeks EPA assistance to help resolve issues.

8)The State manages and implements its nonpoint source program efficiently and effectively, including necessary financial management.

9) The State periodically reviews and evaluates its nonpoint source management program using environmental and functional measures of success, and revises its nonpoint source assessment and its management program at least every five years.

